

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Complaint on Changes in Retail Hours

Docket No. C2014-1

ORDER DISMISSING COMPLAINT

(Issued July 28, 2014)

I. INTRODUCTION

Douglas F. Carlson (Carlson or Complainant) filed a complaint case on April 30, 2014.<sup>1</sup> The Complaint Erratum alleges violations by the Postal Service of 39 U.S.C. § 3661. Complaint Erratum at ¶¶ 2-7. On May 20, 2014, the Postal Service filed a motion to dismiss the Complaint Erratum.<sup>2</sup> The Postal Service asserts that the Commission should dismiss the Complaint Erratum for failure to state a claim or, in the alternative, the Commission should refer the Complaint Erratum to the rate and service inquiry process pursuant to 39 C.F.R. § 3030.13. Carlson responded by filing an

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<sup>1</sup> Douglas F. Carlson Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief, April 30, 2014. On May 8, 2014, Complainant filed a notice and an erratum to his original complaint. Douglas F. Carlson Notice of Filing of Corrected Exhibit 1 to Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief, May 8, 2014; Douglas F. Carlson Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief [Erratum], May 8, 2014 (Complaint Erratum). All references in this Order are made to the Complaint Erratum.

<sup>2</sup> United States Postal Service Motion to Dismiss the Complaint on Changes in Retail Hours, May 20, 2014 (Motion to Dismiss).

answer to the Postal Service's Motion to Dismiss on May 27, 2014.<sup>3</sup> For the reasons discussed below, the Postal Service's Motion to Dismiss is granted. The Complaint Erratum is dismissed.

## II. CARLSON'S COMPLAINT ERRATUM

The Complaint Erratum contains two separate claims.

### A. Failure to Seek Advisory Opinion Claim

Carlson first alleges that certain revisions to the Postal Operations Manual (POM) constituted a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis and for which the Postal Service should have requested an advisory opinion from the Commission. Complaint Erratum at ¶¶ 5-6. Specifically, Complainant states that effective August 23, 2012, the Postal Service revised POM section 126.42 to remove the following language, which had been added to section 126.42 in 2010:

'If the needs of the community have changed, the postmaster should use recent Window Operations Survey (WOS) reports as well as customer feedback to determine if a change in service hours should be considered. If the postmaster determines a change in service hours are warranted, he/she must obtain approval.'

*Id.* at ¶¶ 2-3.

Carlson argues that this revision represents a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis because it "eliminates the nexus between retail hours and the needs of the community." *Id.* at ¶ 4. Carlson further argues that the Postal Service should have, and did not, seek an advisory opinion from the Commission prior to implementing the change to section 126.42. *Id.* at ¶ 5.

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<sup>3</sup> Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss, May 27, 2014 (Answer).

### B. Inadequate and Inefficient Service Claim

Second, Carlson alleges that changes in retail hours (*i.e.*, ending retail hours at 5:00 p.m.) at approximately twenty-five post offices, branches, and stations in the San Francisco District have resulted in the Postal Service not providing adequate and efficient postal services. *Id.* at ¶ 29. Complainant also alleges that at some of the post offices, stations, and branches in the San Francisco District where the Postal Service plans to end retail service at 5:00 p.m. on weekdays, the Postal Service also plans to change the final collection time to 5:00 p.m. on May 4, 2014. *Id.* at ¶ 26. Complainant also states that no signs informing customers of the change in retail hours comply with all requirements of POM section 126.41 (*i.e.*, relating to a requirement to inform customers of the location of the nearest post office). *Id.* at ¶ 18.

### III. THE POSTAL SERVICE'S MOTION TO DISMISS

The Postal Service moves to dismiss the Complaint Erratum on several grounds. First, the Postal Service argues that Complainant fails to state any claim upon which the Commission may issue a remedy. Motion to Dismiss at 4. The Postal Service states that as the basis of Complainant's claim under 39 U.S.C. § 3661(b), "Complainant alleges that the revision of POM section 126.42 'eliminates the nexus between retail hours and the needs of the community.'" *Id.* at 5. The Postal Service urges that this contention reflects an "isolated" review of POM section 126.42 and ignores other sections of the POM that apply to the establishment and modification of retail hours. *Id.* The Postal Service further argues that while it "strives" to provide adequate and efficient postal services, section 3661(a) requires that the Postal Service only "develop and promote adequate and efficient postal services." *Id.* at 7. The Postal Service then asserts that because Complainant has not alleged that the Postal Service has failed to develop and promote adequate and efficient postal services, his allegations are insufficient to establish a violation of section 3661(a). *Id.* The Postal Service also argues the Complainant fails to identify or address "numerous Postal Service operated

retail facilities with P.O. Box service and window hours that extend beyond 5:00 p.m.” *Id.* at 8.

Second, the Postal Service argues that Complainant’s allegations that the Postal Service violated certain provisions of the POM are not cognizable claims under the Commission’s complaint authority because the POM is not one of the specifically enumerated provisions in 39 U.S.C. § 3662(a). *Id.* at 8-9.

Third, the Postal Service suggests, that if the Commission were not to grant its Motion to Dismiss, the Commission should refer the Complaint Erratum to the rate and service inquiry process pursuant to 39 C.F.R. § 3030.13. *Id.* at 13.

#### IV. CARLSON’S ANSWER TO MOTION TO DISMISS

Carlson responds to the Postal Service’s Motion to Dismiss with several arguments. First, Carlson reiterates his position that the revision to section 126.42 of the POM represents a change in the nature of postal services because “customers nationwide no longer can expect retail hours that meet their needs.” Answer at 5. Complainant also seeks to clarify that his Complaint Erratum does not allege *violations* of the POM. *Id.* at 8.

Second, Complainant argues that because the requirement to develop adequate and efficient postal services under 39 U.S.C. § 3661(a) has existed since at least 1971, most Postal Service activities should be focused on promoting adequate and efficient postal services. *Id.* at 6. Carlson then explains that “promoting” postal services is best viewed as a directive to the Postal Service to “increase” adequate and efficient postal services; and the Postal Service, when it reduces retail hours, is not increasing adequate and efficient postal services. *Id.*

Third, Carlson claims that the Complaint Erratum does not qualify for the rate or service inquiry process provided under 39 C.F.R. § 3030.13 because the changes affect a significant number of mail users. *Id.* at 10-11. However, Complainant states he would not object to such a referral. *Id.* at 11.

## V. COMMISSION ANALYSIS

Carlson filed his Complaint Erratum pursuant to 39 U.S.C. § 3662(a), which authorizes:

[a]ny interested person . . . who believes the Postal Service is not operating in conformance with the requirements of . . . this chapter . . . may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

In brief, Complainant makes two claims: (1) that certain revisions to the POM were a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis and for which the Postal Service failed to seek an advisory opinion from the Commission under section 3661(b); and (2) that changes in retail hours at approximately twenty-five post offices, branches, or stations in the San Francisco District have resulted in the Postal Service not providing adequate and efficient postal services under section 3661(a).

### A. Failure to Seek Advisory Opinion Claim

Pursuant to 39 U.S.C. § 3661(b):

[w]hen the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

Complainant argues that the Postal Service should have requested an advisory opinion from the Commission when it revised section 126.42 of the POM because that revision was a change in the nature of postal services that generally affected service on a nationwide or substantially nationwide basis. Complaint Erratum at ¶¶ 5-6.

Section 3661(b), however, only becomes relevant when a *change* is “in the nature of postal services.” Determining whether a change falls within this criteria

“involves a qualitative examination of the manner in which postal services available to the user will be altered.” *Buchanan v. U.S. Postal Service*, 508 F.2d 259, 263 (5th Cir. 1975); see also *Wilson v. U.S. Postal Service*, 441 F.Supp. 803, 808 (C.D. California 1977).

Under this set of facts, the Commission concludes that the revision to the POM in 2012 is not a change within the meaning of the statute. The revision to the POM did not directly affect postal services available to a user of the mail. Instead, the revision to the POM eliminated an express requirement that postmasters use “recent Windows Operation Survey (WOS) reports as well as customer feedback” to determine if a change in retail hours should be considered. The revised provision can most fairly be described as relating to an opportunity to comment, but is not itself in the nature of postal services.<sup>4</sup> Thus, Complainant’s first claim is dismissed because the named revision to the POM is not in the nature of postal services.

The Commission notes that the Postal Service confirms its commitment to providing opportunities for customer feedback in other sections of the POM. See Motion to Dismiss at 7-8. For example, as part of the Postal Service’s Retail Analysis Program (RAP), each district must conduct a full RAP survey (covering all areas of postal service) once every five years. POM § 121.31. The POM directs the district to conduct RAP surveys more frequently where there has been a significant change that affects revenues, workload, and/or customers. *Id.* The RAP survey includes a survey of “customer attitude” whose purpose is “[t]o find out what customers think of the service they receive.” POM Ex. 121.31. Another section of the POM states that “availability of retail services and lobby hours should reflect time periods that most appropriately meet the needs of the majority of customers in the local area” and retail hours for stations and branches can be adjusted “to meet the needs of the local community.” POM § 126.41.

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<sup>4</sup> The Commission notes that the revision of a section of the POM is not comparable to a decision by the Postal Service to close or consolidate a post office, which is reviewable by the Commission under 39 U.S.C. § 404(d)(5).

The Commission encourages the Postal Service to continue to solicit customer input on issues relevant to local operations.

**B. Inadequate and Inefficient Service Claim**

Pursuant to 39 U.S.C. § 3661(a), the Postal Service is directed to “develop and promote adequate and efficient postal services.” Complainant alleges that the recent changes in retail hours at a number of post offices, branches, and stations in the San Francisco District have resulted in the Postal Service not providing adequate and efficient postal services. Complaint Erratum at ¶ 29.

Although the affected post offices, stations, and branches will close one hour earlier (at 5:00 p.m.) on weekdays, the hours of 7:30 a.m. until 5:00 p.m. are generally considered to include standard, normal business hours. In this instance, the Commission finds that the reduction in retail hours from 10.5 hours per day to 9.5 hours per day in certain post offices, stations, and branches in the San Francisco District does not support a claim of inadequate or inefficient service under section 3661(a). Thus, Complainant’s second claim is dismissed because it is not supported by Complainant’s pleadings in this matter.

In addition, section 3661, when read in its entirety, applies to establishing or modifying substantially nationwide postal services. See Docket No. C2008-1, Order No. 57, Order Dismissing Complaint Without Prejudice, February 1, 2008, at 4-5. Here, Complainant alleges that a reduction of hours has occurred at some locations in the San Francisco District. Under this set of facts, a small reduction in retail hours limited to one metropolitan area cannot reasonably be seen as affecting substantially nationwide postal services.

In conclusion, the Postal Service’s Motion to Dismiss is granted for the reasons discussed above.

VI. ORDERING PARAGRAPHS

*It is ordered:*

1. The Postal Service's Motion to Dismiss is granted.
2. The Complaint Erratum filed by Douglas F. Carlson on May 8, 2014 is dismissed.

By the Commission.

Shoshana M. Grove  
Secretary

Chairman Goldway, Dissenting



## DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Commission should not dismiss this Complaint Erratum but instead should evaluate it through the 39 U.S.C. § 3662 complaint process to determine whether it identifies a nationwide or substantially nationwide change in service.

In my opinion, the Complaint Erratum raises instructive questions about the procedures the Postal Service is using to change operating hours throughout its retail network, not just in San Francisco.

The Postal Service has eliminated from its operations manual a requirement for customer feedback to determine if a change in service hours should be considered. I am concerned that diminishing this opportunity for customer input could result in inadequate or inefficient service to Postal Service customers. It is also troubling that according to the Complaint Erratum, the Postal Service does not appear to be following its own procedures regarding posting notice of changes 30 days in advance.

Removing an opportunity for local customer input is shortsighted. The language in the operations manual does not set forth any requirements and does not prescribe any specific requirement or guidance for obtaining customer feedback. Customers can not be assured that their views will be elicited when service changes are considered. I urge the Postal Service to institute more definitive procedures for obtaining customer input before determining that changes in hours are reasonable.

It is noteworthy that the customer surveys, meetings, and input the Commission called for in its Advisory Opinion on the Postal Service's POSTPlan (reviewing and adjusting post office retail service hours) have improved acceptance of that Plan in affected communities.

Another concern raised by the elimination of this language is what data postmasters will use to determine whether there has been a change in customer needs. Although the language in question did not require the use of quantitative data in making these decisions, it did at least suggest that Window Operations Survey reports be used as a basis for the determination.

The Complaint Erratum states that hours will be decreased in twenty-five stations and branches in the San Francisco district. This may signal a broader pattern that may have regional or national consequences. We do not know. The Commission does not have sufficient information as yet to make a fact-based determination.

A key function of the Commission is to ensure the transparency and accountability of the Postal Service. The types of information needed to assess whether there has been a nationwide change in service are in the hands of the Postal Service. An individual or small business should not be expected to undertake the significant burden of procuring this information alone. Therefore, it is incumbent on the Postal Service to be forthcoming with this information, and the Commission to obtain such information before dismissing a complaint.

More information might have presented a clearer picture of the issues raised by the complaint, such as: 1) how the language that was eliminated had been incorporated into decisions on retail hour changes and the actual impact of eliminating that language; 2) the number of retail facilities nationwide where decreases in retail hours have been implemented; and, 3) how often the policy of providing 30 day notice is not followed.